JOHN A. RUSSO, City Attorney, SBN 129729
RANDOLPH W. HALL, Assistant City Attorney, SBN 080142
RACHEL WAGNER, Supervising Trial Attorney, SBN 127246
CHRISTOPHER KEE, Deputy City Attorney, SBN 157758
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-7686, Fax: (510) 238-6500
Email: ckee@oaklandcityattorney.org
26189/556553

Attorneys for Defendants,
CITY OF OAKLAND, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMUNDO CHAVEZ,

Plaintiff,

v.

CITY OF OAKLAND, CHIEF WAYNE G. TUCKER, OFFICER K. REYNOLDS, OFFICER CESAR GARCIA, and DOES 1-20, inclusive,

Defendants.

Case No. C 08-04015 CRB

DEFENDANT OFFICERS KEVIN REYNOLDS AND CESAR GARCIA'S MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS OF QUALIFIED IMMUNITY; NOTICE OF MOTION; MEMORANDUM OF POINTS AND AUTHORITIES

Date: April 17, 2009
Time: 10:00 a.m.
Courtroom: 8, 19th Floor

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page No(s).

FEDERAL CASES

STATE CASES

FEDERAL RULES

STATE STATUTES

NOTICE OF MOTION

TO PLAINTIFF AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 17, 2009, at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 8 on the 19th floor of the above captioned court, located at 450 Golden Gate Avenue in San Francisco, Ca, defendant officers Kevin Reynolds and Cesar Garcia will and hereby do move the Court for an order pursuant to Federal Rule of Civil Procedure 56, entering judgment on their behalf on the grounds that they are entitled to qualified immunity for the claims against them in plaintiff's Complaint for Damages. The motion is made on the grounds that there are no genuine issues of material fact, and the defendants are entitled to judgment as a matter of law. More specifically, the motion is based on the following grounds:

1. As to plaintiff's First Amendment claims, plaintiff suffered no violation of his First Amendment rights, and, even if he did, the officers could have reasonably believed that plaintiff had no First Amendment right to remain at the scene of the accident under the facts of this case.
2. As to plaintiff's Fourth Amendment claims, plaintiff suffered no violation of his Fourth Amendment rights, and even if he did, the officers could have reasonably believed that there was probable cause to detain plaintiff for violations of the California Vehicle Code.
3. Because there was no underlying violation of his constitutional rights, there is no basis for his claims arising under the ostensible authority of California Civil Code section 52.1.
4. Similarly, because there was no underlying violation of plaintiff's constitutional rights, there can be no viable claim against the City of Oakland or Wayne Tucker in his official capacity.

The motion is based on this notice and motion, the attached memorandum of points and authorities, the accompanying declarations, the complete files of this case, and any argument or evidence the court may entertain at the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff was detained and cited by police for violations of the California Vehicle Code after he stopped his car in the number one lane of Interstate 880 in Oakland and got out in order to take pictures, while standing in lanes of traffic on the freeway, of an overturned vehicle and a woman lying in the road, who police believed at the time was the victim of a hit and run driver.

Plaintiff, who is a staff photographer for the Oakland Tribune, claims violations of his rights under the First and Fourth Amendments to the U.S. Constitution. As developed at length below, the defendant officers are entitled to qualified immunity, and judgment must be entered on their behalf according. More specifically, they are entitled to qualified immunity because (1) the record shows that plaintiff suffered no violation of his constitutional rights and (2) even if he had, the officers could have reasonably believed they were acting in accordance with the law. Pearson v. Callahan, ___ U.S. ___; 129 S.Ct. 808, 815 (2009). Furthermore, the officers cannot be liable for plaintiff's claims brought under the ostensible authority of California Civil Code 52.1, nor can the City of Oakland be liable, because plaintiff cannot show he suffered any violation of his underlying constitutional rights, which are the only rights specified in his claims for relief. Reynolds v. County of San Diego, 84 F.3d 1162, 1170-1171 (9th Cir. 1996) (overruled on other grounds in Acri v. Varian Associates, Inc., 114 F.3d 999, 1000 (9th Cir. 1997)); City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986); Quintanilla v. City of Downey, 84 F.3d 353, 355 (9th Cir. 1996).

II. STATEMENT OF FACTS

On May 4, 2007, while on duty as a motorcycle officer for the Oakland Police Department, defendant Oakland Police Officer Kevin Reynolds (Officer Reynolds) came upon a vehicle accident on Interstate 880 in Oakland. Declaration of Rachel Wagner (Wagner Dec.), Exhibit 1 at 15:23-16:3; 18:1-11. Traffic was backed up; as he approached the scene, he observed an overturned vehicle in the number 1 lane and a person lying on the ground. Id., Exhibit 1 at 18:12-20:4. Traffic was stop and go, moving slowly around the site of the accident. Id., Exhibit 1 at 24:12-17; 26:14-17.

Officer Reynolds parked his motorcycle straddling the number 1 and number 2 lanes and

radioed for emergency medical assistance and for the CHP. Wagner Dec., Exhibit 1 at 24:24-26:21. He spoke briefly with the victim about her medical condition. He also spoke with a witness who told him that another vehicle had caused the accident and fled the scene. Id., Exhibit 1 at 32:12-34:25; Exhibit 2 at p.3. Officer Reynolds' duty was not to investigate the accident, but to maintain the scene and ensure everyone's safety until medical personnel and the CHP arrived on the scene. Id., Exhibit 1 at 40:16-41:1. Officer Reynolds believed that the site of the accident was a crime scene: a felony hit and run. Id., Exhibit 1 at 116:11-13.

Officer Reynolds then observed plaintiff Chavez in the area of the Number 2 lane of the interstate, taking photographs. Wagner Dec., Exhibit 1 at 41:2-5. The officer asked if plaintiff had seen the accident; he said he had not. The officer then asked where his vehicle was. Plaintiff indicated that it was in the number 1 lane south of where the accident had occurred. Officer Reynolds observed traffic merging around plaintiff's parked vehicle into the number 2 lane. Id., Exhibit 1 at 42:7-43:24.

Officer Reynolds asked plaintiff to return to his car and to move it. Wagner Dec., Exhibit 1 at 49:24-50:1. He viewed the parked car as a hazard because it could cause cars to back up behind it so that, when the fire department and other emergency personnel would arrive, they too would be stuck and have to merge into traffic to get around the car. Id., Exhibit 1 at 50:10-54:12. He gave plaintiff the option of moving the car further north to the 29th Avenue/Fruitvale exit where there was a shoulder, and that he could continue to take his photographs from there. Id., Exhibit 1 at 151:22-152:4; Exhibit 5 at 59:10-18.

Defendant Officer Cesar Garcia also arrived at the scene of the accident, and saw plaintiff standing in the number 2 lane. Wagner Dec., Exhibit 5 at 17:25-18:6; 35:6-36:6. He considered Chavez' presence in the lanes of traffic to be a hazard, and told him that he would have to leave. Officer Garcia then continued to assist other cars that had stopped so that they could leave the scene. Id., Exhibit 5 at 46:3-47:2.

Although he had said he would do so, plaintiff did not return to his car. Wagner Dec, Exhibit 4, 66:25-71:15. Both Officer Garcia and Officer Reynolds observed him in an area adjacent to the number 2 and 3 lanes of the freeway after Officer Reynolds had told him to leave. Id.,

Exhibit 1 at 56:22-61:23; Exhibit 5 at 52:8-13; 56:18-58:20. When told once again that he had to leave, plaintiff told Officer Reynolds that he (plaintiff) had a right to be on the scene. Id., Exhibit 1 at 54:22-61:23; Exhibit 4 at 89:11-90:5; Exhibit 5 at 87:15-17. Officer Reynolds heard drivers honking their horns at plaintiff, and traffic was swerving around him. Id., Exhibit 1 at 147:20-23; 58:8-11. While he was talking with plaintiff, Officer Reynolds also heard sirens and saw an Oakland Fire Department rig approaching the scene. Because plaintiff's car was parked in the number 1 lane, the emergency vehicle had to maneuver around the car in order to reach the scene of the accident. Id., Exhibit 1 at 58:3-6; 71:21-72:4. Additionally, his presence was a distraction to the officers who were dealing with the accident and crime scene. Wagner Dec., Exhibit 5 at 74:14-22; 76:6-18; 77:9-78:2.

After plaintiff did not leave the scene, even though Officer Reynolds asked him three times to do so and told him that the accident was a crime scene (Wagner Dec., Exhibit 4 at 74:1-16; 89:5-90:24), and emergency vehicles were impeded from approaching the scene because of plaintiff's car, Officer Reynolds decided to detain plaintiff. He placed plaintiff in handcuffs and led him to the median. Id., Exhibit 1 at 72:5-18; Exhibit 5 at 82:4-8. Officer Reynolds decided to detain plaintiff because he believed that by failing to move his car as ordered, his presence and the presence of his vehicle posed a hazard. Id., Exhibit 1 at 65:24-3; 102:10-103:20. In addition, he was concerned with preserving the integrity of the site as a crime scene. Id., Exhibit 1 at 129:4-23. He issued a citation to plaintiff for violations of California Vehicle Code sections 22400(A) and 2800(a). Id., Exhibit 3. The officer removed the handcuffs; Mr. Chavez signed the citation and left the scene. Id., Exhibit 5 at 67:15-20.

III. LEGAL ARGUMENT

A. The Defendant Officers are entitled to qualified immunity for Plaintiff's first amendment claims.

The doctrine of qualified immunity "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Pearson v. Callahan, ___ U.S. ___; 129 S.Ct. at 815 (citing Harlow v. Fitzgerald, 457 U.S. 808, 818 (1982)). In Pearson, the U.S. Supreme

Court re-calibrated the "order of battle" for establishing a claim of qualified immunity, retreating from the rigid formula announced in Saucier v. Katz, 533 U.S. 194, which required (in this order) examination of whether the conduct violated a constitutional right, and, if so, whether the right was clearly established. In Pearson the court concluded that the Saucier inquiry may be "beneficial" but is not mandatory. Id. at 818.

The two-prong inquiry is "beneficial" here because the clear absence of any constitutional violation amplifies the reasonableness of the officers' belief that their conduct was lawful. See id. at 815 (qualified immunity serves the interest of "the need to shield officials from harassment, distraction and liability when they perform their duties reasonably.") In addition, because a two-prong qualified immunity inquiry demonstrates no constitutional violation, it serves to dispose of plaintiff's claims against the City of Oakland, and his state law claim under California Civil Code section 52.1 as well, since those causes of action are based on alleged violations of his rights under the First and Fourth Amendments.

Turning to the claims themselves, plaintiff's First Amendment cause of action rests on nothing more than the proposition that, because he is a member of press, he had a First Amendment right of access to the accident scene, and his detention and citation interfered with that right. As explained below, the defendant officers are entitled to qualified immunity because: (1) there is in fact no First Amendment right implicated here and (2) even if there was, the officers could have reasonably believed that they were acting lawfully.

1. Plaintiff had no First Amendment right of access to the accident scene.

Plaintiff's conduct here falls outside the First Amendment. Members of the press enjoy no First Amendment right of access to the scenes of crimes and accidents superior to that of the general public. Branzburg v. Hayes, 408 U.S. 665, 684-685 (1972); Houchins v. KQED, 438 U.S. 1, 10-11 (1978); see also Los Angeles Free Press Inc. v. City of Los Angeles, 9 Cal. App. 3d 448, 455 (1970) and federal authorities cited therein.

Plaintiff cannot seriously contend that a member of the general public could, without repercussions, simply stop and exit his or her car on an interstate at the site of an accident and possible crime scene under any circumstances, let alone wander in the lanes of traffic in order to

take pictures of the car and the victim. Nor can he seriously contend that public officials do not have the countervailing right, indeed the obligation, to ensure the safe use of the public highways. The U.S. Supreme Court affirms this truism:

> Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions.

Cox v. New Hampshire, 312 U.S. 569, 574 (1941)

These authorities dispose of plaintiff's First Amendment claims. There is no First Amendment right to stop and exit one's vehicle on the freeway, particularly where, as here, to do so might, and in fact did, hamper access by emergency vehicles to a serious accident and crime scene. In that regard, it bears repeating that plaintiff's detention and citation were based on violations of sections 22400(A) and 2800 (a) of the Vehicle Code, respectively, impeding traffic and failure to obey a lawful order under the Vehicle Code. These are laws clearly directed at "the safety and convenience of the people in the use of the public highways." Their enforcement here is not "inconsistent" with plaintiff's civil liberties, but rather an incontrovertible exercise of the City's obligation to safeguard the public order and promote the public convenience "in the interest of all." There is simply no First Amendment violation under these facts.

2. The Officers could have reasonably believed that their conduct here was in conformity with federal law.

Even if there could be a viable First Amendment claim, which there is not, the officers are nonetheless entitled to qualified immunity because they could have reasonably believed their conduct lawful. Fuller v. M.G. Jewelry, 950 F.2d 1437, 1443 (9th Cir. 1991) (citing Anderson v. Creighton, 483 U.S. 635, 641 (1987)). As noted several times, it is undisputed that plaintiff stopped

and exited his vehicle in the number one lane of Interstate 880. The record shows further that plaintiff remained standing in lanes of traffic on the freeway even after being ordered three times to return to his car and move it. It is also undisputed that an Oakland Fire Department emergency vehicle had to negotiate around plaintiff's stopped and driverless vehicle. Finally, it is undisputed that at the time of his interaction with plaintiff, both Officer Reynolds and Officer Garcia believed the accident was a felony hit and run, and informed plaintiff of that it was a crime scene.

Given these facts, both Officer Reynolds and Officer Garcia could have reasonably believed that their conduct was consistent with plaintiff's First Amendment rights. As noted above, both state and federal courts have concluded that the press does not have an unfettered right of access to crime scenes, or, it would appear, access where their presence could interfere with public safety. The officers could thus have reasonably concluded that the First Amendment did not require them to let plaintiff, who claims such an unfettered right of access to a crime scene, and whose vehicle and personal presence interfered with emergency medical providers and distracted the officers, roam the scene at will. The officers' response was manifestly reasonable, and they are entitled to qualified immunity accordingly.

3. The Officers' conduct was in conformity with state law.

Plaintiff's complaint also points to state laws and OPD procedures that supposedly allowed him a right of access. Regardless of whether those laws (1) support his position and (2) were violated, the officers' compliance (or lack thereof) with state law or departmental regulations has no bearing on whether they could have believed their conduct was consistent with federal law. Case v. Kitsap County Sheriff's Department, 249 F.3d 921, 929 (9th Cir. 2001). On this record, the officers could have reasonably believed they were acting in compliance with federal law, and they are entitled to qualified immunity on plaintiff's First Amendment claims.

However, even under state law, the record shows that the officer's actions were lawful or, at the very least, they could have reasonably believed that they were.

Under California law, members of the press are afforded access to such things as disaster sites. Leiserson v. City of San Diego, 184 Cal. App. 3d 41, 50-51 (1986). However, they may be excluded where their presence will interfere with emergency operations. Id. at 51. The record here

shows that plaintiff's abandoned car did just that. Directing him to remove his car was not a limitation on his role as a member of the press, but rather an order to prevent interference with access by emergency personnel.

And while the press may be entitled to limited access to disaster scenes, it enjoys no special right of access to crime scenes at all. Under California law, "such scenes have traditionally been subject to exclusion orders which apply to the press as well as the general public." Leiserson v. City of San Diego, 184 Cal. App. 3d at 52. It is once again beyond dispute that both officers believed that the accident site was in fact a crime scene, specifically the site of a felony hit and run. Here as well, California law expressly allowed for plaintiff to be excluded in the same manner that the general public can be excluded. Id. In that regard, a member of the general public obviously has no right to leave his or her car in the fast lane of the freeway, wander between lanes of traffic and interfere with emergency vehicles and vehicular traffic. Even if state law were an element of the qualified immunity analysis, there was no violation of state law here.

B. The Defendant Officers Are Entitled To Qualified Immunity For Plaintiff's Fourth Amendment Claims.

Plaintiff also seeks recovery for purported violations of his Fourth Amendment rights, based on the assertion that he was detained without probable cause. Here again the officers are entitled to qualified immunity because (1) the undisputed facts show that there was in fact probable cause to detain plaintiff on the Vehicle Code violations for which he was cited and (2) the officers could have reasonably believed that their conduct was consistent with the Fourth Amendment.

1. There was probable cause to detain Plaintiff for violations of California Vehicle Code Sections 22400(A) And 2800(a).

An officer has probable cause to arrest an individual without a warrant "if the available facts suggest a fair probability that the suspect has committed a crime." Tatum v. City and County of San Francisco, 441 F.3d 1090, 1094 (9th Cir. 2006). An officer who observes criminal conduct may arrest the offender without a warrant, even if the pertinent offense carries only a minor penalty. Id. (citing Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he

may, without violating the Fourth Amendment, arrest the offender.")

As explained below, there was without question probable cause to arrest plaintiff on the Vehicle Code charges for which he was cited, and his Fourth Amendment claims fail accordingly.

a. The record shows that Plaintiff was in violation of Vehicle Code section 22400(A).

Section 22400(A) of the California Vehicle Code provides, in pertinent part that "No person shall bring a vehicle to a complete stop upon a highway so as to impede or block the normal and reasonable movement of traffic unless the stop is necessary for safe operation and in compliance with the law."

Here, by plaintiff's own admission, he stopped his car on the freeway, and then got out to take photographs. It is undisputed that because he had exited his car an OFD emergency vehicle was impeded from approaching the scene. It also seems self evident that a driverless vehicle stopped in the Number 1 lane of a freeway would necessarily "block the normal and reasonable movement of traffic"—indeed, both officers observed exactly that. This is so even if traffic is slowing at the scene of an accident; safety and access, not to mention common sense, require that traffic keep moving, albeit at a slower speed.

The record thus establishes beyond dispute that there was probable cause to charge plaintiff with a violation Vehicle Code section 22400(A).[1]

b. Plaintiff failed to obey a lawful order to move his vehicle, thus establishing a violation of Vehicle Code section 2800(a).

California Vehicle Code section 2800(a) makes it unlawful to "willfully fail or refuse to comply with a lawful order, signal, or direction of a peace officer when that peace officer is in uniform and performing duties pursuant to any provision of this code."

It is undisputed that the officers told plaintiff to move his car a minimum of three times. Even after Officer Reynolds ordered plaintiff to return to his car and to move it, plaintiff, again by

[1] Plaintiffs' complaint only alleges lack of probable cause. It does not allege that plaintiff could not be detained because of the nature of the charge itself, nor could he consistent with Supreme Court authority. See Atwater v. City of Lago Vista, 532 U.S. at 351; Virginia v. Moore, ___ U.S. ___; 128 S.Ct. 1598, 1604-1607 (2008).

his own admission, did not proceed directly to his car in compliance with the officer's order. According to the officers, not only did he not return to his car, he was moving around in the vicinity of the number 2 and 3 lanes of the interstate with drivers honking their horns and swerving around him. Here too then, the record discloses all the requisite elements of the offense, which was committed in the presence of the officer. There was thus without question also probable cause to arrest the plaintiff on the section 2800(a) charge.

2. The Officers could have reasonably believed their conduct was consistent with the Fourth Amendment.

Plaintiff has thus far not suggested that he was not in violation of the vehicle code. He has only intimated that state law and departmental procedures separately allowed him to be present at the accident scene. Those contentions do not undermine the officers' entitlement to qualified immunity.

As noted above, compliance with state law or departmental regulations is immaterial to the question of whether a police officer could believe his or her conduct reasonable under the Fourth Amendment (Case v. Kitsap County, 249 F. 3d at 929), nor does state law provide the measure of reasonableness for Fourth Amendment purposes. Virginia v. Moore, 128 S.Ct. at 1604-1607. And as also explained above, even under California law, the officers could properly require plaintiff to move his car notwithstanding his role as a member of the press because the accident was a crime scene, or at the very least, the officers reasonably believed that it was. Leiserson v. City of San Diego, 184 Cal. App. 3d at 52.

Finally, plaintiff may attempt to argue that the arrest was unlawful because the officers did not want him to take pictures of the injured woman. The officers' subjective opinion, however, is irrelevant to the question of probable cause to arrest, which, as demonstrated above, was clearly present here. See e.g. Whren v. United States, 517 U.S. 806, 811-813 (1996).

Under these facts—a vehicle parked on the freeway in a manner that impeded access of emergency vehicles, with the driver wandering in lanes of traffic, who failed to return to and move his car after being asked to do so three times--the officers could have reasonably believed that he was in violation of provisions of the California Vehicle Code that prohibit precisely that conduct.

Both officers are entitled to qualified immunity accordingly. Fuller v. M.G. Jewelry, 950 F.2d at 1443-1445.

C. The absence of a constitutional injury requires dismissal of Plaintiffs' claim under California Civil Code Section 52.1.

Plaintiffs' Fourth Cause of Action seeks recovery under California Civil Code section 52.1. That provision allows a civil action for damages for interference with the exercise or enjoyment of rights "secured by the Constitution or laws of the United States, or by the Constitution or laws of this state." The only underlying rights plaintiff explicitly claims were violated are those arising under the First and Fourth Amendments. As demonstrated above in the qualified immunity analysis, however, plaintiff has suffered no deprivation of those rights. In the absence of any such deprivation, there is no viable basis for his section 52.1 claim either, and the individual defendants are entitled to judgment on those claims as well. Reynolds v. County of San Diego, 84 F.3d at 1170-1171. [2]

D. There can be no viable claim against the City insofar as he suffered no constitutional injury at the hands of the individual Officers.

Plaintiff also names the City of Oakland and Chief Wayne Tucker, in both his official and individual capacity, as defendants. As is the case with plaintiff's claims under Cal. Civil Code section 52.1, because the qualified immunity analysis establishes that plaintiff suffered no constitutional injury at the hands of the individual officers, the claims against the City and Chief Tucker in his official capacity[3] must fall as well. City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986); Quintanilla v. City of Downey, 84 F.3d 353, 355 (9th Cir. 1996).

IV. CONCLUSION

The record establishes that plaintiff suffered no constitutional injury when he was cited and

[2] As noted above, plaintiff lists provisions of state law and OPD procedures, but does not expressly base his claims for relief on those laws. In any event, as also explained above, the officers did not violate state law either.

[3] To the extent that plaintiff sues Chief Tucker in his official capacity, his suit is really against the municipality. See Butler v. Elle, 281 F.3d 1014, 1026 fn 9 (9th Cir. 2004). The City notes that there are no allegations that Chief Tucker had any personal involvement with the conduct at issue here other than failing to provide the officers with adequate training, supervision, discipline, and control.

released after he left his car in the fast lane of the freeway at the scene of a possible hit and run accident. Even if his constitutional rights were implicated under these facts, the defendant officers could have reasonably believed that their own conduct was in conformity with the law. For these and all the foregoing reasons, the officers are entitled to qualified immunity and must be dismissed as individual defendants. And because the record shows no constitutional injury, there is no viable claim either against the City of Oakland, or against the defendants under California Code of Civil Procedure section 52.1.

Dated: March 20, 2009

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Chief Assistant City Attorney
RACHEL WAGNER, Supervising Trial Attorney
CHRISTOPHER KEE, Deputy City Attorney

By: /s/Christopher Kee
Attorneys for Defendants,
CITY OF OAKLAND, et al.